

## Article 49.

### Determination of Jurisdiction Over Providers of Health Care Benefits; Regulation of Multiple Employer Welfare Arrangements.

#### **§ 58-49-1. Purposes.**

The purposes of this section and G.S. 58-49-5 through G.S. 58-49-25 are: To give the State jurisdiction over providers of health care benefits; to indicate how each provider of health care benefits may show under what jurisdiction it falls; to allow for examinations by the State if the provider of health care benefits is unable to show it is subject to the exclusive jurisdiction of another governmental agency; to make such a provider of health care benefits subject to the laws of the State if it cannot show that it is subject to the exclusive jurisdiction of another governmental agency; and to disclose the purchasers of such health care benefits whether or not the plans are fully insured. As used in G.S. 58-49-5 through G.S. 58-49-20, "person" does not mean the State of North Carolina or any county, city, or other political subdivision of the State of North Carolina. (1985, c. 304, s. 1; 1993 (Reg. Sess., 1994), c. 569, s. 1; 2001-334, s. 18.1.)

#### **§ 58-49-5. Authority and jurisdiction of Commissioner.**

Notwithstanding any other provision of law, and except as provided in this Article, any person that provides coverage in this State for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the Commissioner, unless the person shows that while providing the services it is subject to the exclusive jurisdiction of another agency or subdivision of this State or of the federal government. (1985, c. 304, s. 1; 1993 (Reg. Sess., 1994), c. 569, s. 2; 1995, c. 193, s. 40.)

#### **§ 58-49-10. How to show jurisdiction.**

A person may show that it is subject to the exclusive jurisdiction of another agency or subdivision of this State or the federal government, by providing to the Commissioner the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services. If no documentation is issued by that other agency, the person may provide a certification by an official of that agency that states that the person is under the exclusive jurisdiction of that agency. (1985, c. 304, s. 1; 1993 (Reg. Sess., 1994), c. 569, s. 3.)

#### **§ 58-49-12. Exceptions to jurisdiction; health care sharing organizations.**

A health care sharing organization shall not be subject to the jurisdiction of the Commissioner and shall not be considered to be engaging in the business of providing health care benefits as long as the health care sharing organization does the following:

- (1) Maintains nonprofit entity status under the Internal Revenue Code.
- (2) Limits its participants to those who share similar interests as defined by the organization.
- (3) Provides for the financial or medical needs of a participant through contributions from one participant to another in accordance with criteria established by the health care sharing organization.

- (4) Provides amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the health care sharing organization to the participants.
- (5) Publishes a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing organization, as well as the amount published or assigned to participants for their contribution.
- (6) Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the organization that reads, in substance, as follows:

"NOTICE: The organization facilitating the sharing of medical expenses is not an insurance company and neither its guidelines nor its plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be voluntary. No other participant will be compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payment for medical expenses or whether this organization continues to operate, you are always personally liable for the payment of your own medical bills." (2011-103, s. 1.)

#### **§ 58-49-15. Examination.**

Any person that is unable to show under G.S. 58-49-10 that it is subject to the exclusive jurisdiction of another agency or subdivision of this State or of the federal government, shall submit to an examination by the Commissioner to determine the organization and solvency of the person, and to determine whether or not such person complies with the applicable provisions of this Chapter. (1985, c. 304, s. 1; 1993 (Reg. Sess., 1994), c. 569, s. 4.)

#### **§ 58-49-20. Subject to State laws.**

Any person unable to show that it is subject to the exclusive jurisdiction of another agency or subdivision of this State or the federal government, shall be subject to all appropriate provisions of this Chapter regarding the conduct of its business. (1985, c. 304, s. 1; 1993 (Reg. Sess., 1994), c. 569, s. 5.)

#### **§ 58-49-25. Disclosure.**

(a) Any production agency or administrator that advertises, sells, transacts, or administers the coverage in this State described in G.S. 58-49-5 and that is required to submit to an examination by the Commissioner under G.S. 58-49-15, shall, if said coverage is not fully insured or otherwise fully covered by an admitted life, accident, health, accident and health, or disability insurer, nonprofit hospital, medical, or dental service plan, or nonprofit health care plan, clearly and distinctly advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage.

(b) Any administrator that advertises or administers the coverage in this State described in G.S. 58-49-5 and that is required to submit to an examination by the Commissioner under G.S. 58-49-15, shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect. (1985, c. 304, s. 1.)

**§ 58-49-30. Multiple employer welfare arrangements; definition; administrators.**

(a) As used in this section, the term "multiple employer welfare arrangement" or "MEWA" means that term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(40)(A), as amended, that meets either or both of the following criteria:

- (1) One or more of the employer members of the MEWA is either domiciled in this State or has its principal headquarters or principal administrative office in this State.
- (2) The MEWA solicits an employer that is domiciled in this State or that has its principal headquarters or principal administrative office in this State.

(b) Repealed by Session Laws 1991, c. 611, s. 3.

(c) Each insurer licensed to do business in this State that administers a MEWA shall, at the request of the Commissioner, provide the Commissioner with such information regarding the insurer's administrative services contract or contracts with such MEWA or MEWAs that the Commissioner requires. No unlicensed insurer shall administer any MEWA.

(d), (e) Repealed by Session Laws 1991, c. 611, s. 3. (1989 (Reg. Sess., 1990), c. 1055, s. 1; 1991, c. 611, s. 3.)

**§ 58-49-35. Multiple employer welfare arrangements; license required; penalty.**

(a) It is unlawful to operate, maintain, or establish a MEWA unless the MEWA has a valid license issued by the Commissioner. Any MEWA operating in this State without a valid license is an unauthorized insurer.

(b) G.S. 58-49-30 through 58-49-65 do not apply to a MEWA that offers or provides benefits that are fully insured by an authorized insurer or to a MEWA that is exempt from state insurance regulation in accordance with the Employee Retirement Income Security Act of 1974, Public Law Number 43-406. (1991, c. 611, s. 1.)

**§ 58-49-40. Qualifications for licensure.**

(a) To meet the requirements for issuance of a license and to maintain a MEWA, a MEWA must be:

- (1) Nonprofit;
- (2) Established by a trade association, industry association, or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of five years for purposes other than that of obtaining or providing insurance;
- (3) Operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA and that is responsible for all operations of the MEWA. Except as provided in this subdivision, the trustees must be owners, partners, officers, directors, or employees of one or more employers in the MEWA. With the Commissioner's approval, a person who is not such an owner, partner, officer, director, or employee may serve as a trustee if that person possesses the expertise required for such service. A trustee may not be an owner, officer or employee of the administrator or service company of the MEWA. The trustees have the authority to approve applications of association members for participation in the MEWA and to contract with an authorized administrator or service company to administer the operations of the MEWA;
- (4) Neither offered nor advertised to the public generally; and

(5) Operated in accordance with sound actuarial principles.

(b) The MEWA shall issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of benefits and coverages provided shall contain, in boldface print in a conspicuous location, the following statement: "THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST FUND ESTABLISHED BY A GROUP OF EMPLOYERS [name of MEWA]. EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER HIGH AMOUNT MEDICAL CLAIMS. THE TRUST FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION, ALTHOUGH THE TRUST FUND IS MONITORED BY THE NORTH CAROLINA DEPARTMENT OF INSURANCE. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE [name of MEWA]." If applicable, the same documents shall contain, in boldface print in a conspicuous location, the following statement: "PARTICIPATING EMPLOYERS WILL BE RESPONSIBLE FOR FUNDING ALL CLAIMS INCURRED BY EMPLOYEES COVERED UNDER THE TRUST." Any statement required by this subsection is not required on identification cards issued to covered employees or other insureds.

(c) Each MEWA shall maintain excess insurance written by an insurer authorized to do business in this State with a retention level determined in accordance with sound actuarial principles. Such contracts must be filed with the Commissioner and contain notification provisions requiring at least 60 days' notice to the Commissioner from the insurer issuing such coverage prior to the termination or modification of such coverage. The Commissioner may by rule prescribe net retentions levels for MEWAs in accordance with the number of risks insured.

(d) Each MEWA shall establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles.

(e) The Commissioner shall not grant or continue a license to any MEWA if the Commissioner deems that any trustee, manager, or administrator is incompetent, untrustworthy, or so lacking in insurance expertise as to make the operations of the MEWA hazardous to the potential and existing insureds; that any trustee, manager, or administrator has been found guilty of or has pled guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of one year or more under the law of any state or country, whether or not a judgment or conviction has been entered; that any trustee, manager, or administrator has had any type of insurance license revoked in this or any other state; or that the business operations of the MEWA are or have been characterized, to the detriment of the employers participating in the MEWA, of persons receiving benefits from the MEWA, or of creditors or the public, by the improper manipulation of assets, accounts, or excess insurance or by bad faith.

(f) To qualify for and retain a license, a MEWA shall file all contracts with administrators or service companies with the Commissioner, and report any changes to such contracts to the Commissioner in advance of their implementation.

(g) Failure to maintain compliance with the eligibility requirements established by this section is a ground for denial, suspension, or revocation of the license of a MEWA. (1991, c. 611, s. 1.)

#### **§ 58-49-45. Certain words prohibited in name of MEWA.**

No licensed MEWA shall use in its name, contracts, literature, advertising in any medium, or any other printed matter the words "insurance", "casualty", "surety", "mutual", or any other words

descriptive of the insurance business or deceptively similar to the name or description of any insurer doing business in this State. (1991, c. 611, s. 1.)

**§ 58-49-50. Filing of application.**

An association sponsoring a MEWA shall file with the Commissioner an application for a license on a form prescribed by the Commissioner and signed under oath by officers of the association. The application shall include or have attached the following:

- (1) A copy of the articles of incorporation, constitution, and bylaws of the association;
- (2) A list of the names, addresses, and official capacities with the MEWA of the individuals who will be responsible for the management and conduct of the affairs of the MEWA, including all trustees, officers, and directors. Such individuals shall fully disclose the extent and nature of any contracts or arrangements between them and the MEWA, including possible conflicts of interest.
- (3) A copy of the articles of incorporation, bylaws, or trust agreement that governs the operation of the MEWA.
- (4) A copy of the policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided to covered employees, including a table of the rates charged or proposed to be charged for each form of such contract. An actuary who is a member of the American Academy of Actuaries or the Society of Actuaries and has experience in establishing rates for a self-insured trust and health services being provided, shall certify that:
  - a. The rates are neither inadequate, nor excessive, nor unfairly discriminatory.
  - b. The rates are appropriate for the classes of risks for which they have been computed.
  - c. An adequate description of the rating methodology has been filed with the Commissioner and such methodology follows consistent and equitable actuarial principles.
- (5) A copy of a fidelity bond, in an amount determined by rules adopted by the Commissioner, issued in the name of the MEWA and covering any individuals managing or handling the funds or assets of the MEWA. In no case may the bond be less than fifty thousand dollars (\$50,000) or more than five hundred thousand dollars (\$500,000).
- (6) A copy of the MEWA's excess insurance agreement.
- (7) A feasibility study, made by an independent qualified actuary and an independent certified public accountant with an opinion acceptable to the Commissioner, that addresses market potential, market penetration, market competition, operating expenses, gross revenues, net income, total assets and liabilities, cash flow, and other items as the Commissioner requires. The study shall be for the greater of three years or until the MEWA has been projected to be profitable for 12 consecutive months. The study must show that the MEWA would not, at any month end of the projection period, have less than the reserves as required by G.S. 58-49-40(d).

- (8) A copy of an audited financial statement of the MEWA reflecting the minimum statutory reserve as required by G.S. 58-49-40(d).
- (9) Evidence satisfactory to the Commissioner showing that the MEWA will be operated in accordance with sound actuarial principles. The Commissioner shall not approve the MEWA unless it is determined that the MEWA is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles.
- (10) A copy of every contract between the MEWA and any administrator or service company.
- (11) Such additional information as the Commissioner may require. (1991, c. 611, s. 1.)

**§ 58-49-55. Examinations; deposits; solvency regulation.**

(a) The provisions of Articles 2, 5, and 30 of this Chapter regarding examinations, deposits, and supervision and receivership respectively apply to MEWAs. The provisions of Article 62 of this Chapter and of Article 8B of Chapter 105 of the General Statutes do not apply to MEWAs.

(b) An audit or examination of a MEWA shall be conducted only when there are circumstances to support a reasonable belief of a MEWA's noncompliance with this Article. (1991, c. 611, s. 1.)

**§ 58-49-60. Annual reports; actuarial certifications; quarterly reports.**

(a) Every MEWA shall, within 150 days after the end of each of its fiscal years or within any such extension of time that the Commissioner for good cause grants, file a report with the Commissioner, on forms prescribed by the Commissioner and verified by the oath of a member of the board of trustees and by an administrative executive appointed by the board, showing its financial condition on the last day of the preceding fiscal year. The report shall contain an audited financial statement of the MEWA prepared in accordance with statutory accounting principles, including its balance sheet and a statement of the operations for the preceding fiscal year certified by an independent certified public accountant. The report shall also include an analysis of the adequacy of reserves and contributions or premiums charged, based on a review of past and projected claims and expenses.

(b) In addition to the information called for and furnished in connection with the annual report, if reasonable grounds exist, the Commissioner may request information that summarizes paid and incurred expenses and contributions or premiums received; and may request evidence satisfactory to the Commissioner that the MEWA is actuarially sound. That information and evidence shall be furnished by the MEWA not later than 30 days after the request, unless the Commissioner, for good cause, grants an extension.

(c) Annually, in conjunction with the annual report required in subsection (a) of this section, the MEWA shall submit an actuarial certification prepared by an independent qualified actuary that indicates:

- (1) The MEWA is actuarially sound, with the certification considering the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the MEWA;
- (2) The rates being charged and to be charged for contracts are actuarially adequate to the end of the period for which rates have been guaranteed;

- (3) Incurred but not reported claims and claims reported but not fully paid have been adequately provided for; and
- (4) Such other information relating to the performance of the MEWA that is required by the Commissioner.

(d) If reasonable grounds exist, the Commissioner may require a MEWA to file quarterly, within 45 days after the end of each of its fiscal quarters, an unaudited financial statement on a form prescribed by the Commissioner, verified by the oath of a member of the board of trustees and an administrative executive appointed by the board, showing its financial condition on the last day of the preceding quarter.

(e) Any MEWA that fails to file a report as required by this section is subject to G.S. 58-2-70; and after notice and opportunity for hearing, the Commissioner may suspend the MEWA's authority to enroll new insureds or to do business in this State while the failure continues. (1991, c. 611, s. 1.)

**§ 58-49-65. Denial, suspension, or revocation of license.**

(a) The Commissioner shall deny, suspend, or revoke a MEWA's license if the Commissioner finds that the MEWA:

- (1) Is insolvent;
- (2) Is using such methods and practices in the conduct of its business as to render its further transaction of business in this State hazardous or injurious to its participating employers, covered employees and dependents, or to the public;
- (3) Has failed to pay any final judgment rendered against it in a court of competent jurisdiction within 60 days after the judgment became final;
- (4) Is or has been in violation of or threatens to violate any provision of this Article;
- (5) Is no longer actuarially sound; or
- (6) Is charging rates that are excessive, inadequate, or unfairly discriminatory.

(b) The Commissioner may deny, suspend, or revoke the license of any MEWA if the Commissioner determines that the MEWA:

- (1) Has violated any lawful order or rule of the Commissioner; or any applicable provision of this Article; or
- (2) Has refused to produce its accounts, records, or files for examination under G.S. 58-49-55 or through any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to an examination.

(c) Whenever the financial condition of the MEWA is such that, if not modified or corrected, its continued operation would result in impairment or insolvency, in addition to any provisions in Article 30 of this Chapter, the Commissioner may order the MEWA to file with the Commissioner and implement a corrective action plan designed to do one or more of the following:

- (1) Reduce the total amount of present potential liability for benefits by reinsurance or other means.
- (2) Reduce the volume of new business being accepted.
- (3) Reduce the expenses of the MEWA by specified methods.
- (4) Suspend or limit the writing of new business for a period of time.

If the MEWA fails to submit a plan within the time specified by the Commissioner or submits a plan that is insufficient to correct the MEWA's financial condition, the Commissioner may order the MEWA to implement one or more of the corrective actions listed in this subsection.

(d) The Commissioner shall, in the order suspending the authority of a MEWA to enroll new insureds, specify the period during which the suspension is to be in effect and the conditions, if any, that must be met prior to reinstatement of its authority to enroll new insureds. The order of suspension is subject to rescission or modification by further order of the Commissioner before the expiration of the suspension period. Reinstatement shall not be made unless requested by the MEWA; however, the Commissioner shall not grant reinstatement if it is found that the circumstances for which suspension occurred still exist. (1991, c. 611, s. 1.)